

REMARKS

Election and Response to Restriction Requirement

The Examiner has asserted that “this application contains claims directed to the following patentably distinct species comprising: diazepines, piperazines, pyridines and amides.” The species are said to be independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species, the Examiner further noting that, in addition, these species are not obvious variants of each other based on the current record. Accordingly, the Examiner has required Applicants to elect a “single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable”.

While it is assumed that the Examiner is referring to these four species appearing in the R¹ substituent, this restriction requirement is respectfully traversed because it is not clear whether the Examiner is referring to such species being R⁴ itself or R⁴ and/or any substituent thereon, and also because the four named species do not encompass the entire scope of R⁴. However, subject to this traversal, Applicants provisionally elect the species “piperazines.” Each of compound claims 1-13 encompasses the elected species, as do process and method claims 14 and 17-20 which are dependent on the compound claims. Claims 15-16 and 21-23 have been cancelled by the above amendments.

It is understood that this is a provisional election in that the Examiner notes that the claims shall be restricted to the elected species “if no generic claim is finally held to be allowable.” Therefore, no attempt has been made to limit the claims to the elected species in the above amendments.

Claim Amendments

The claims have been amended to eliminate improper multiple dependent claims and to reduce excess claims fees, and otherwise have been amended in form and format only to place them in condition more customary for US patent prosecution. Claims 15-16 and 21-23 have been cancelled as being in a “use” format, not generally accepted under US practice.

It should be clear from the above that no new matter has been added; and entry of these amendments is therefore believed to be appropriate and is respectfully requested. These amendments are being made without disclaimer or prejudice to Applicants’ right to prosecute any cancelled subject matter in one or more divisional or continuing applications.

Following entry of these amendments, claims 1-14 and -17-20 remain pending in this application.

Table of Related Applications

The Examiner's attention is directed to the following updated table co-pending U.S. patent applications and patents of Applicants' assignee, which may be considered technically related to the present application:

Inventor	U.S. Serial No. Filing Date	U.S. Pub. No. Pub. Date	PCT Pub. No. PCT Pub. Date	Status
Brown et al.	09/936,698 09/17/2001	6,548,514 04/15/2003	WO 00/55120 09/21/2000	Patented
Brown et al.	10/353,127 01/29/2003	6,794,380 09/21/2004	WO 00/55120 09/21/2000	Patented
Brown et al.	09/674,428 11/01/2000	6,465,455 10/15/2005	WO 99/59960 11/25/1999	Patented
Brown et al.	09/674,560 11/02/2000	6,579,872 06/17/2003	WO 99/59959 11/25/1999	Patented
Brown et al.	10/424,127 04/28/2003	6,956,037 10/18/2005	WO 99/59959 11/25/1999	Patented
Brown et al.	09/508,055 03/07/2000	6,498,274 12/24/2002	WO 99/15164 04/01/1999	Patented
Brown et al.	10/265,736 10/08/2002	6,686,467 02/03/2004	WO 99/15164 04/01/1999	Patented
Brown	09/936,758 11/15/2001	7,008,945 03/07/2006	WO 00/55153 09/21/2000	Patented
Brown	11/176,327 07/08/2005	7,442,704 10/28/2008	WO 00/55153 09/21/2000	Patented
Brown	11/505,904 08/18/2006	7,332,483 02/19/2008	WO 00/55153 09/21/2000	Patented
Cumming	09/937,018 09/20/2001	6,784,174 08/31/2004	WO 00/56738 09/28/2000	Patented
Brown et al.	09/762,106 02/02/2001	6,821,965 11/23/2004	WO 00/07980 02/17/2000	Patented
Brown et al.	10/947,463 09/23/2004	US 2005-0038081 02/17/2005	WO 00/07980 02/17/2000	Assigned to Examiner Timothy E. Betton in GAU 1617; Non Final Action Mailed 03-24-2009.
Brown et al.	09/762,107 02/02/2001	6,432,949 08/13/2002	WO 00/07991 02/17/2000	Patented
Brown et al.	10/192,495 07/11/2002	7,060,700 06/03/2006	WO 00/07991 02/17/2000	Patented
Brown et al.	11/125,321 05/10/2005		WO 00/07991 02/17/2000	Abandoned

Inventor	U.S. Serial No. Filing Date	U.S. Pub. No. Pub. Date	PCT Pub. No. PCT Pub. Date	Status
Brown et al.	09/787,882 03/23/2001	6,455,520 09/24/2002	WO 00/18738 04/06/2000	Patented
Cumming	09/787,883 03/23/2001	6,593,333 07/15/2003	WO 00/20402 04/13/2000	Patented
Cumming	10/441,084 05/20/2003	6,716,847 04/06/2004	WO 00/20402 04/13/2000	Patented
Cumming	10/070,360 03/05/2002	6,846,827 01/25/2005	WO 01/27089 04/19/2001	Patented

With the exception of the US publication and US patents listed in the table above in bold (for which a copy is not required to be provided), a copy of the specification and claims for each application, in the form of the published PCT application from which such application was filed, has been submitted with a previously filed Information Disclosure Statement.

It is assumed that the Examiner has ready electronic access to each of the listed US pending applications, but the undersigned will provide a copy of any document from these files if requested by the Examiner.

Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully Submitted,
Morgan Lewis & Bockius LLP

Date: May 18, 2009
Morgan Lewis & Bockius LLP
Customer No. **09629**
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel. No.: 202-739-3000

By: /Donald Bird/
Donald J. Bird
Registration No. 25,323
Tel. No.: (202) 739-5320
Fax No.: (202) 739-3001